

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

CASE 99-F-1314 - Application of Consolidated Edison Company of New York, Inc. for a Certificate of Environmental Compatibility and Public Need to Repower its East River Generating Station located in the Borough of Manhattan, New York City.

PROCEDURAL RULING

(Issued February 15, 2002)

ROBERT R. GARLIN, Presiding Examiner, and  
DANIEL P. O'CONNELL, Associate Examiner:

BACKGROUND

Pursuant to a notice issued on January 25, 2002, a prehearing conference was held on January 31, 2002 before Presiding Examiner Robert R. Garlin and Associate Examiner Daniel P. O'Connell. By its Order Granting Rehearing in Part, issued January 24, 2002, the Siting Board directed that a further hearing be held in this proceeding on the issue of particulate matter of 2.5 microns or smaller (PM<sub>2.5</sub>) as it relates to the proposed facility. The purpose of the prehearing conference was to identify the parties who will be sponsoring testimony at the hearing, discuss scheduling and other procedural matters, and address such other matters as may be necessary.<sup>1</sup>

PROCEDURAL SCHEDULE

At the prehearing conference, various parties agreed to submit, by February 11, 2002, descriptions of new or additional materials they would propose for inclusion into the record on rehearing, in response to the Siting Board's order of

---

<sup>1</sup> By mistake, the reporter at the prehearing conference was directed to begin numbering the transcript at page 2308. The page numbers for the prehearing conference transcript should be changed to begin at page 2881 and end at page 2940.

January 24, 2002. After reviewing those submissions, we are establishing the following procedural schedule:

Direct Testimony and Exhibits	February 22, 2002
Rebuttal Testimony and Exhibits	March 4, 2002
Hearings Begin	March 11, 2002

As required by the January 24 order, posthearing briefs will be addressed directly to the Secretary to the Siting Board. The parties should be prepared to argue their respective cases in a single round of briefs, due seven days after the close of the hearings.

The parties are reminded that rebuttal testimony and exhibits should be limited to responses to other parties' direct testimony and exhibits. New matters should not be raised in rebuttal cases.<sup>2</sup>

Finally, in order to expedite the orderly conduct of the hearings,<sup>3</sup> all parties shall observe the following procedures for the introduction of prepared testimony and for the introduction of proposed exhibits during cross-examination:

1. Fully-corrected copies of prepared testimony, printed or typewritten on a single side of the page and conforming with the requirements of 16 NYCRR §4.5, shall be submitted to the examiners and the stenographic reporter. The examiners and parties shall also be given copies of pages of prepared testimony originally served

---

<sup>2</sup> Thus, there is no basis for the assertion by counsel for East River Environmental Coalition, Manhattan Community Board 3, New York Public Interest Research Group, and Environmental Defense that "our clients reserve the right to supplement . . . any testimony submitted by any other parties." No such right is recognized in the rules of procedure applicable to this case.

<sup>3</sup> Public Service Law (PSL) §165(2).

on the parties on which corrections are clearly marked.

2. Documents obtained through informal discovery processes will be allowed into the evidentiary record only in accordance with 16 NYCRR §5.2(b).
3. Parties planning to propose the inclusion of other documents in the evidentiary record during the examination of witnesses must have sufficient copies of those documents, at the time of the examination, so that at least one copy can be distributed to the reporter, to each of the examiners, and to each active party on whose behalf an appearance has been entered at the hearing session. Unless the examiners otherwise deem it proper, a recess will not be called during the course of the examination to accommodate this requirement.

#### SCOPE OF ISSUES AND SUBMISSIONS

In their joint submission of February 11, 2002, East River Environmental Coalition, Manhattan Community Board 3, New York Public Interest Research Group, and Environmental Defense (the latter was then a prospective intervenor) proposed to submit testimony and/or exhibits on a "59<sup>th</sup> Street Alternative" and "Repowering of East River Boilers 60 and 70." By letter dated February 12, 2002, the applicant has requested that such submissions be precluded on the grounds that they would go beyond the scope of the order granting rehearing.

The applicant's argument is well taken. The order granting rehearing, which was issued after a Certificate was granted for the planned facility, directs that evidentiary hearings be held "solely on the issue of air quality impacts of PM2.5 as it relates to the Applicant's repowering project." Parties shall limit their presentations to the facility certificated by the Siting Board.

The intervenors' joint submission proposes as well to (1) "submit into evidence the 1996 EPA PM Criteria Document

(hereafter 1996 CD), including, but not limited to, Chapters 3, 5, 6, and 7"; and (2) "submit relevant sections of the 1996 EPA PM 'Staff Paper' (hereafter 1996 SP) including, but not limited to, chapters IV, VI, and VII." However, the various issuances by the Environmental Protection Agency, and the Presidential Documents, appearing in the July 18, 1997 Federal Register are, by definition, matters of public record, and there is no need include in the record of this proceeding earlier and/or underlying EPA staff documents.

Finally, we are not approving, at this time, the intervenors' apparent proposal that "[t]he submissions of documents and testimony include any and all documents or citations referenced by those documents and testimony." Pursuant to PSL §167(1)(b), irrelevant, repetitive, redundant or immaterial evidence will not be included in the record.

#### MOTION TO INTERVENE

At the prehearing conference, Environmental Defense submitted a written motion for leave to intervene in this proceeding. The motion is opposed by the applicant and the Department of Public Service Staff.

The rules of procedure applicable to this proceeding provide that "[a] party intervening after the start of the hearing shall be bound by the record as developed to that point and by such conditions of intervention as the presiding officer may impose."<sup>4</sup> Following the prehearing conference, Environmental Defense joined three other intervenors in submitting a proposed scope of evidence; and a later electronic mail note to the parties advised that Environmental Defense would be represented by the same counsel as two of those intervenors. Accordingly, Environmental Defense's motion will be granted subject to the

---

<sup>4</sup> 16 NYCRR §4.3(c)(2).

condition that it continue to participate in this proceeding only on a joint basis with East River Environmental Coalition and Community Board 3.<sup>5</sup>

(SIGNED)

ROBERT R. GARLIN

DANIEL P. O'CONNELL

---

<sup>5</sup> PSL §167(1)(b).